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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,387	01/12/2001	Michael Roger Cane	14409-9006-00	2484

23409 7590 11/19/2002

MICHAEL BEST & FRIEDRICH, LLP  
100 E WISCONSIN AVENUE  
MILWAUKEE, WI 53202

EXAMINER

SHAH, DEVAANG

ART UNIT PAPER NUMBER

3737

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/760,387

Applicant(s)

CANE ET AL.

Examiner

Devaang Shah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 5-12, 35, 37, 38, 42-50, and 52-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-34, 58, 59, 64 and 65 is/are allowed.
- 6) ☒ Claim(s) 1, 8, 35, 37, 42-49 and 52-57 is/are rejected.
- 7) ☒ Claim(s) 5-7, 9-12, 38 and 50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

1. Claims 1, 8, 35, 37, 42-49, and 52-57 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,081,612 to Gutkowitz-Krusin et al.
2. Referring to claims 1 and 8, Gutkowitz-Krusin et al. disclose systems and methods for non-invasive spectral imaging and characterization of skin tissue. The method includes illuminating an area of skin with light from three spectral bands and digitally imaging the area of skin with the remitted light. The digital images are comprised of digital signals whose values are functions of the skin condition. The images are processed and segmented by a processor. The processor outputs the condition of the skin by estimating values of skin parameters and comparing a weighted combination of these values to a threshold value. The threshold value may come from a training set of images that exemplify skin conditions (column 3, lines 53-67; column 4, lines 1-25).

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3. Referring to claims 35, 37, 42-49, and 52-57, the apparatus of Gutkowicz-Krusin et al. is shown in figures 1 and 2. The apparatus includes a light source (3), a photo-receptor (6), processing means to perform applications such as comparing variations (12), a filter wheel (29), polarization means both for illumination light and remitted light (31 and 31a), means to pass a control signal to a display device (12), means to carry out illumination in various spectral bands (4 and 27), means to monitor remitted light intensity (6 and 12), means for a flexible light guide (30a and 30b), and means to further carry out the methods of Gutkowicz-Krusin et al.

### ***Response to Arguments***

4. Applicant's arguments filed on 15 August 2002 have been fully considered but they are not persuasive. Applicant has amended claims to include the limitation that the reference tissue is a tissue of "known structure." Gutkowicz-Krusin et al. do not use tissue of unknown structure. The structure of skin and skin abnormalities such as lesions or burns is well known. Therefore the limitation of a tissue of "known structure" is not sufficient to overcome the Gutkowicz-Krusin et al. invention. Applicants argue that Gutkowicz-Krusin et al. "differs from the present invention in that the present invention does not automatically provide a diagnosis." However, the amended claims do not distinguish their method as being manual, or operator controlled, rather than automatic.

### ***Allowable Subject Matter***

5. Claims 13-34, 58, 59, 64, and 65 are allowed.

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6. Claims 5-7, 9-12, 38-41, and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

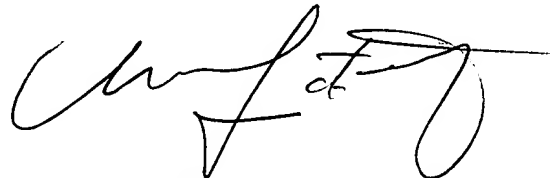
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devaang Shah whose telephone number is 703-306-0333. The examiner can normally be reached on M-F, 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin Lateef can be reached on 703 308-3256. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DS *DS*  
November 3, 2002

A handwritten signature in black ink, appearing to read 'Marvin M. Lateef', with a stylized flourish at the end.

Marvin M. Lateef  
Supervisory Patent Examiner  
Group 3700